

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
[REDACTED]

Date: MAY 10 2002
[REDACTED]
[REDACTED]
[REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]
[REDACTED]

Dear Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. We have concluded that you may qualify under section 501(c)(7) of the Code.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven Miller

Director, Exempt Organizations

Enclosures: 3

ENCLOSURE 1

ISSUE: Is the organization qualified for exemption under Internal Revenue Code section 501(c)(3)?

FACTS: The organization was formed as a corporation on [REDACTED] and their application for recognition of exemption was received by the Service on [REDACTED]. The following is the organization's statement of activities that was included in their application:

Our activities include but are not limited to providing [REDACTED], living skills, tutoring, etc. to minority and/or disadvantaged [REDACTED]. We seek to finance these goals through fund raising and contributions from both the private and public sectors.

We have been pursuing (sic) these goals since our date of incorporation but have found corporate sponsorship difficult without tax exempt status, therefor the reason for this application.

The base of operations for these activities has been the former [REDACTED] at [REDACTED]. We are trying to raise the funds to keep this location. The fundraising activities will be executed by the offices (sic), board members and volunteers of [REDACTED].

In Article IV of the organization's Articles of Incorporation, it states:

The corporation is organized for the following purposes:

- 1) To assist in enhancing the educational experience of [REDACTED] students on the campus of [REDACTED] through supporting the activities of the [REDACTED];
- 2) To provide [REDACTED] facilities for use by the members of the [REDACTED] and to provide meeting facilities for use by any and all [REDACTED] students of the [REDACTED] for educational and life-skills training, college subject tutorial sessions, seminars, job fairs and any other event designed to better students for school and life;
- 3) To do any and all acts and things necessary, convenient, expedient, ancillary, or in aid to the accomplishment of the foregoing; and
- 4) To engage in any lawful act or activities related thereto, and to engage in any lawful act or activities for which corporations may be organized under the [REDACTED] Corporation Code.

In a portion of Article IV, Section 2 of the organization's bylaws regarding Board of Directors, it states:

The maximum number of directors of the corporation shall be fifteen (15). The minimum number of directors shall be nine (9). The initial number of directors shall be six (6). Three (3) additional directors shall be added at the

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initial meeting of directors held immediately after incorporation. Each director shall hold office for a term of two (2) years and until her successor shall have been elected and qualified or until her death or until she shall resign or shall have been removed in the manner hereinafter provided. Directors need not be residents of the State of [REDACTED] but must be a duly-recognized soror of [REDACTED]. The President of the [REDACTED] Chapter of [REDACTED] shall by reason of her office be a member of the board of directors of [REDACTED]. The members of [REDACTED] Chapter of [REDACTED] shall have the right to appoint one additional member to the board of directors of [REDACTED].

The organization's membership appears to consist primarily of an [REDACTED] group because their "Fact Sheet" lists notable members such as [REDACTED] and [REDACTED]. Additionally, through a statement that the organization provided in Item 8 of their correspondence dated September 29, 2001, it is presumed that the organization's members is predominantly from a [REDACTED] group. Such statement is quoted in part, "Of the 15 [REDACTED] houses, none are own (sic) or operated by [REDACTED] students."

LAW: Organizations exempt under Section 501(c)(3) of the Code are defined as:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Regulations section 1.501(c)(3)-1(c)(1) states "An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Paragraph (2) of the same Regulations section states "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals"

Regulations section 1.501(a)-1(c) defines a private shareholder or individual as "persons having a personal and private interest in the activities of the organization."

The term "charitable" is defined in Regulations section 1.501(c)(3)-1(d)(2) as follows:

Such terms include: *Relief of the poor and distressed or of the underprivileged*; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

"Educational" includes the following terms in Regulations section 1.501(c)(3)-1(d)(3):

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

In Revenue Ruling 76-336, 1976-2 CB 143, the Service held that a nonprofit organization formed to provide housing for students of a college unable to provide adequate student housing and located in a community which suitable housing is not otherwise available is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code. The circumstances in this particular revenue ruling are as follows:

The organization is a nonprofit corporation formed to provide [REDACTED] for students of a particular [REDACTED]. The organization was formed by community leaders in response to studies by staff members of the [REDACTED] and the community leaders that determined that the community in which the [REDACTED] is located does not have suitable [REDACTED] available at a reasonably affordable rent to meet the needs of the [REDACTED] or its [REDACTED]. The [REDACTED] itself provides no [REDACTED] facilities because it is financially unable to do so. As its enrollment has grown, however, many of the students in its primary service area live at such a distance that daily commuting is not reasonably possible.

The organization operates a [REDACTED] facility for [REDACTED] adjacent to the [REDACTED]. All [REDACTED] of the [REDACTED] are eligible to apply for the [REDACTED]. Applications for [REDACTED] are accepted on a first come-first served basis. Charges to [REDACTED] for the [REDACTED] approximate costs, including debt retirement. The organization is not controlled by the [REDACTED] residents or by the [REDACTED]. However, the [REDACTED] and the organization consult and cooperate

to ensure that the needs of the [REDACTED] and its [REDACTED] are served by the operation of the [REDACTED] facility. The organization is governed by a board of directors composed of community leaders. The organization's income is from rentals of the [REDACTED] facilities and from contributions. Its disbursements are for operating expenses and debt retirement.

Because the organization provided needed [REDACTED] that was not otherwise available and all [REDACTED] who attend the [REDACTED] were eligible to apply for residence, the organization both helped the [REDACTED], which was unable to provide adequate [REDACTED], to fulfill its educational purposes, and aided the [REDACTED] to attain an education. The organization advanced education through the presence of these activities.

In Revenue Ruling 64-274, 1964-2 CB 141, the Service holds that an organization charitable through the advancement of education because the organization provided worthy and needy students free housing facilities and funds for the purchase of books and instructional supplies or equipment on a gift or interest-free loan basis.

In Revenue Ruling 75-470, 1975-2 CB 207, the Service holds that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration and preservation of homes, churches and public buildings having special historical or architectural significance and to open the structures for viewing by the general public qualified for exemption under Internal Revenue Code section 501(c)(3).

In Revenue Ruling 64-118, 1964-1 CB 118, the Service holds that an organization that was formed to furnish, on a rental basis, a chapter house to a fraternity, which is composed of students, did not qualify for exemption as an educational organization under Internal Revenue Code section 501(c)(3). The revenue ruling determined that the organization could qualify as a social club under Internal Revenue Code section 501(c)(7). The situation in this revenue ruling is as follows:

In the instant case, the alumni members of a [REDACTED] formed a corporation for the purpose of furnishing financial aid and assistance in the education of students affiliated with the fraternity at a local university. Membership is open to all alumni members of the local chapter and to other alumni members of the fraternity interested in the promotion of a high scholastic standard among the members and pledges attending the university. Its primary activity, however, is concerned with the operation and maintenance of a chapter house adjacent to the university which is leased to the members of the local chapter. Receipts are derived from donations, loans, and rental payments. Its principal expenditures are incurred in improving and maintaining the chapter house.

In order to qualify for exemption under the above-cited provision of law, an organization must be both organized and operated exclusively for one or more of the purposes specified therein. An organization may be formed for the purpose of promoting the education of the members of a local chapter of a fraternity or sorority, but, in order to qualify for exemption under section 501(c)(3) of the Code, the purposes and activities must be educational within the contemplation of the statute and must be without any substantial noneducational purpose or activity.

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But where the predominant activity is the acquisition, improvement or maintenance of a chapter house, incidental activities concerned with the cultural development of students are not sufficient to bring the trust within the classification of an educational organization described in section 501(c)(3) of the Code. While it is true that the organization in the instant case is associated with education in that it encourages and promotes higher scholastic standards among the members of the fraternity, encourages extracurricular activities, and is instrumental in furnishing them with housing facilities, its actual operations conclusively illustrate that it is not organized and operated exclusively for educational purposes within the intentment of section 501(c)(3) of the Code.

ORGANIZATION'S POSITION: The organization provided some literatures pertaining to their organization. A portion of their Mission Statement included the following:

To assist in enhancing the educational experience of [REDACTED] and [REDACTED] on the campus of [REDACTED]

To serve as a hub of community outreach and volunteerism, while offering housing and enhanced educational and cultural experiences to the [REDACTED] and surrounding community.

To provide housing facilities for use by the members of the [REDACTED] and to provide meeting facilities for use by any and all [REDACTED] of the [REDACTED] for educational and life-skills training, college subject tutorial sessions, seminars, job fairs and any other event designed to better students for school and life.

They were formed for the following purposes:

1. To Build a Life Development Center
2. Continue to provide community and campus educational tutorial programs
3. To assist [REDACTED] through the support of technology and engineering studies via a computer lab, library, meeting and study room
4. Restore Historic landmark and [REDACTED] living facility for [REDACTED]

Their Action plan included the following statements:

The life Development Center will provide housing for use by the members of the sorority on the upper level and training and meeting facility for use by [REDACTED] of [REDACTED] on the lower level. The residents of the house will be charged fair market value of housing on the [REDACTED] with proceeds going to fund the community service activities and maintenance and upkeep.

The primary purpose of the Life Development complex is educational and life skills training and to support events designed to prepare [REDACTED] for successful matriculation through school and life. In the spirit of service, [REDACTED] proposes the Total Person Development Series. The Total

Person concept is to create a well-rounded and well-adjusted individual able to function well in a society. The Total Person Concept encompasses Educational Development, Physical & Mental Health and Economic Development.

Their literature indicates that they are engaged in various philanthropic activities targeted to the community or [redacted] students throughout the year. Their philanthropies include the following:

1. A technological and engineering studies program,
2. Career Development seminars, which include tips on resume writing, interviewing and business etiquette,
3. Adopt-a-School program with an emphasis on offering providing reading tutors to "at risk" students,
4. Safe Sex programs to African-American youth,
5. Participation in the annual AIDS Walkathon,
6. Health and wellness programs in conjunction with [redacted] Health and Wellness Center, and
7. Money & Debt Management training.

Based on a conversation made with the organization's President [redacted] on December 19, 2001, the aforementioned activities will be conducted within and without the facility.

In their attachment to Page 27, Item 2 of Form 1023, it states:

The purpose of this campaign is to preserve and restore a vital educational and historic resource, back to the [redacted] community. By building the [redacted] Development Center, The ladies of [redacted] Will also be restoring and improving the only existing [redacted] educational-student run location left on the [redacted] -. Over 1500 [redacted] students and 15 minority organizations are currently without the benefits of this facility that once served them in numerous capacities.

Although the minority community sponsors the programs, a majority of them are (sic) open and available for participation and support by the larger [redacted] community. With respect to the [redacted] priority will be provided to the [redacted] chapter members who have agreed to occupy the house to its fully capacity. In the event the [redacted] total membership drops below its capacity, other [redacted] students will be recruited for housing consideration.

Their Building Campaign literature was submitted. In their Statement of [Financial] Appeals, it states in part:

This location, formally known as "[redacted]" has served as a student library for course tutorials, a study hall, a homecoming kick off location, and a social initiative for minority freshman. It also provides a place for the [redacted] to maintain their unity, preserve their culture, and savor their history.

Furthermore, it continues:

Due to unsafe conditions and building code violations accumulated through normal deterioration, the ladies of [REDACTED] were (sic) forced to evacuate their home. This facility was the only [REDACTED] on the campus.

In their application and in their literatures, several references were made indicating that the original house was a historic landmark. In Item 8 of correspondence dated June 27, 2001 to the organization, they were asked to provide evidence to show how their previous facility was of historical or architectural significance. Their response dated September 29, 2001 states:

The historical value of the original facility lied in its uniqueness and location. There are over 15 [REDACTED] lettered houses on [REDACTED]. These houses are located in the middle of [REDACTED] is on and around [REDACTED] Street. This area is known as midtown in [REDACTED]. Most of the property in this area is considered historic and still holds some of the original architecture. However, the [REDACTED] houses on [REDACTED] historic value is not so much in the architecture but the history of the campus and the location in midtown [REDACTED] (near the [REDACTED]).

In Item 9 of the June 27th correspondence to the organization, they were asked if their proposed facility will be rebuilt or restored in a manner that will retain its historical or architectural significance. Their September 29th response stated, "The new facility will be restored on the same lot of land, which will maintain the significance gained by location [REDACTED]."

In Item 10 of the May 15th correspondence to the organization, the organization was requested to consider exemption under Internal Revenue Code section 501(c)(7) based on Revenue Ruling 64-118. Their response dated May 29th argued:

...we maintain the position that we are not a social club. We are not affiliated with [REDACTED] other than being [REDACTED] ourselves. Our organization has no formal connections to this entity. Our focus is educational in nature to benefit the [REDACTED] and surrounding [REDACTED] communities.

SERVICE'S POSITION: Because one of the organization's purposes is to provide housing to members of [REDACTED], an effort was made to determine if the sorority itself was exempt under Internal Revenue Code section 501(c)(3). In Item 6 of correspondence dated May 15, 2001 to the organization, they were asked to provide a copy of an exemption letter for the [REDACTED].

In their response dated May 29, 20001, it states:

[REDACTED] is not related to and or affiliated with [REDACTED]. [REDACTED] is recognized as a separate entity/organization and is composed of [REDACTED] members of the [REDACTED].

In Item 14 of correspondence dated June 27, 2001 to the organization, it states:

In Item 10 of your correspondence dated May 29, 2001, it states that the organization is "not affiliated with [REDACTED] other than being [REDACTED] ourselves. Our organization has no formal connections to this entity." Since the upper level(s) of the new facility will be housing [REDACTED] and the facility will be overseen by [REDACTED] members, please explain how it is possible that your organization is not affiliated with the [REDACTED]

Their response dated September 29th states:

We [REDACTED], (sic) are composed of member of [REDACTED] although [REDACTED] is not formally affiliated with [REDACTED]. In addition, [REDACTED] Inc. does not recognize [REDACTED] as an affiliated organization or entity. Further, [REDACTED] does not recognize the "[REDACTED]" on the campus of [REDACTED] as an affiliated property.

The [REDACTED] an official and recognized chapter of [REDACTED] will continue to function according to [REDACTED] bylaws and procedures. The [REDACTED] and [REDACTED] on [REDACTED] will be governed [REDACTED] bylaws and procedures.

Because the organization appeared to be circumventing the question on the exempt status of the [REDACTED] in Item 15 of the June 27th correspondence to the organization, they were asked to explain if the [REDACTED] was exempt under Internal Revenue Code section 501(c)(3) or 501(c)(7) and to provide substantiation. Their response dated September 29th states, "[REDACTED] Inc. is a 501(c)(7) tax exempt organization. [REDACTED] is a 501(c)(3) tax exempt AND tax deductible organization."

Based on Item 8 of the organization's correspondence dated May 29, 2001, the proposed facility, [REDACTED] will be majority owned and operated by [REDACTED]. All daily operations and long-term planning for the complex will be coordinated by this entity."

In Item 4 of the organization's September 29th correspondence, they provided a brief description of their facility. The total square footage of the proposed [REDACTED] facility will range from 4000 to 4500 square feet consisting of approximately 2000 square feet per level. Ten [REDACTED] will reside on the upper floor, which will consist of five bedrooms, five bathrooms, a living area and storage facilities. The first floor will include rooms for seminars special events, a library and computer labs.

Public viewing of the [REDACTED] prior to its condemnation was limited "because the old facility was not designed for both general meeting and living areas...since this was also living facilities" as stated in Item 10 of the organization's September 29th correspondence. In that same section, it further states "The published telephone line allowed leaders of other minority organizations as well as students to easily contact any resident of the [REDACTED] and request use of the facility."

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is instrumental in furnishing them with housing facilities, its actual operations conclusively illustrate that it is not organized and operated exclusively for educational purposes within the intentment of section 501(c)(3) of the Code.

• **CONCLUSION:** Based on the information presented by the organization, they do not qualify for exemption under Internal Revenue Code section 501(c)(3) as an educational organization because they will not be provide housing to [REDACTED] college students.